

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL CURTIS,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

Case No. 2:21-cv-01932-GMN-EJY

ORDER

On October 20, 2021, Plaintiff Michael Curtis filed an emergency motion for preliminary injunction and a notice of motion to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 3.) On October 22, 2021, this Court ordered Plaintiff Michael Curtis to file a complaint and a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before December 20, 2021. (ECF No. 3.) The Court warned Plaintiff Michael Curtis that the action could be dismissed if he failed to file a complaint and a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3.) That deadline expired and Plaintiff Michael Curtis did not file a complaint, a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.

1 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
2 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
3 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
4 dismiss an action on one of these grounds, the Court must consider: (1) the public's
5 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
6 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
7 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
8 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
9 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

10 The first two factors, the public's interest in expeditiously resolving this litigation
11 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff
12 Michael Curtis' claims. The third factor, risk of prejudice to defendants, also weighs in
13 favor of dismissal because a presumption of injury arises from the occurrence of
14 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See*
15 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public
16 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
17 favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic alternatives can
19 be used to correct the party's failure that brought about the Court's need to consider
20 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
21 that considering less drastic alternatives *before* the party has disobeyed a court order
22 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
23 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
24 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
25 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
26 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
27 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
28 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779

1 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
2 unless Plaintiff Michael Curtis files a complaint and either files a fully complete application
3 to proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the only
4 alternative is to enter a second order setting another deadline. But the reality of repeating
5 an ignored order is that it often only delays the inevitable and squanders the Court's finite
6 resources. The circumstances here do not indicate that this case will be an exception:
7 there is no hint that Plaintiff Michael Curtis needs additional time or evidence that he did
8 not receive the Court's order. Setting another deadline is not a meaningful alternative
9 given these circumstances. So the fifth factor favors dismissal.

10 II. CONCLUSION

11 Having thoroughly considered these dismissal factors, the Court finds that they
12 weigh in favor of dismissal. IT IS THEREFORE ORDERED that this action is dismissed
13 without prejudice based on Plaintiff Michael Curtis' failure to file a complaint and a fully
14 complete application to proceed *in forma pauperis* or pay the full \$402 filing fee in
15 compliance with this Court's October 22, 2021, order. The Clerk of Court is directed to
16 enter judgment accordingly and close this case. No other documents may be filed in this
17 now-closed case. If Michael Curtis wishes to pursue his claims, he must file a complaint
18 in a new case.

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20 DATED: January 5, 2022

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24 GLORIA M. NAVARRO
25 UNITED STATES DISTRICT JUDGE
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